

TO: Mail Stop 8
 Director of the U.S. Patent & Trademark Office
 P.O. Box 1450
 Alexandria, VA 22313-1450

**REPORT ON THE
 FILING OR DETERMINATION OF AN
 ACTION REGARDING A PATENT OR
 TRADEMARK**

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Northern District of California on the following Patents or Trademarks:

DOCKET NO CV 11-00778 EMC	DATE FILED 2/22/11	U.S. DISTRICT COURT 450 Golden Gate Avenue, P.O. Box 36060, San Francisco, CA 94102
PLAINTIFF GLOBALMEDIA GROUP LLC	DEFENDANT LOGITECH INC	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 see Complaint		
2 5,855,343		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wleking	(BY) DEPUTY CLERK Sheila Rash	DATE February 22, 2011
-----------------------------	----------------------------------	---------------------------

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

1 constitutes a valid agreement to arbitrate. Further, this royalty dispute clearly falls
2 within the scope of the agreement to arbitrate. Accordingly, under the alternative basis
3 of the CAA, this Court "shall" order the parties to arbitrate this controversy.

4 **REQUEST FOR HEARING AND EXPEDITED RELIEF**

5 7. Logitech has no legitimate excuse to avoid arbitration. It merely seeks
6 delay. Consistent with the strong national policy favoring arbitration, the FAA
7 provides for expedited judicial procedures when arbitration is being avoided. As
8 provided in the FAA, "[a]n application to the court hereunder shall be made and heard
9 in the manner provided by law for the making and hearing of motions." 9 U.S.C. § 6.
10 In that regard, at least "[f]ive days' notice in writing of an application for arbitration
11 shall be served upon the party in default." *Id.* at § 4. Then, the "court shall hear the
12 parties, and upon being satisfied that the making of the agreement for arbitration or the
13 failure to comply therewith is not in issue, the court shall make an order directing the
14 parties to proceed to arbitration in accordance with the terms of the agreement." *Id.*
15

16 8. Alternatively, consistent with the strong state public policy favoring
17 arbitration, the CAA provides for expedited judicial procedures when arbitration is
18 being avoided. As provided in the CAA, "[a] petition under this title shall be heard in a
19 summary way in the manner and upon the notice provided by law for the making and
20 hearing of motions, except that not less than 10 days' notice of the date set for the
21 hearing on the petition shall be given."

22 9. Accordingly, GlobalMedia respectfully requests that this Court convene a
23 hearing, on an expedited basis, to determine whether this matter should be arbitrated,
24 at such time as the Court's docket permits.

PRAYER FOR RELIEF

Wherefore, GlobalMedia prays for judgment and an order, on an expedited basis:

- (a) that Mr. Thomas Smegal shall serve as arbitrator for this dispute (or, alternatively, that another court-appointed arbitrator shall be appointed);
 - (b) directing that arbitration proceed, and that Logitech be compelled to arbitrate this dispute;
 - (c) that GlobalMedia be awarded its attorney's fees and costs of court; and
 - (d) that GlobalMedia be awarded such other and further relief as the Court deems just and proper.

Dated: February 21, 2011

Respectfully submitted,

John J. Edmonds (SBN 274200)
COLLINS, EDMONDS &
POGORZELSKI, PLLC
1851 East First Street, Suite 900
Santa Ana, California 92705
(951) 708-1237
(951) 824-7901 (fax)

Attorney for Plaintiff,
GLOBALMEDIA GROUP, LLC

1 John J. Edmonds (SBN 274200)
2 COLLINS, EDMONDS & POGORZELSKI, PLLC
3 1851 East First Street, Suite 900
4 Santa Ana, California 92705
5 (951) 708-1237
6 (951) 824-7901 (fax)

7 Attorney for Plaintiff,
8 **GLOBALMEDIA GROUP, LLC**

9
10 GLOBALMEDIA GROUP, LLC,

11 Plaintiff,

12 vs.

13 LOGITECH, INC.

14 Defendant.

15 E-FILING
16 E-filing
17 REC'D FEB 22 AM 11:10
18 NORTHERN DISTRICT OF CALIFORNIA
19
20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22
23 Case No. CV11 0778
24
25 COMPLAINT/APPLICATION TO
26 COMPEL ARBITRATION, AND
27 REQUEST FOR HEARING AND
28 EXPEDITED RELIEF
EMC

16 Plaintiff GlobalMedia Group, LLC ("GlobalMedia") files this
17 complaint/application to compel arbitration, and request for hearing and expedited
18 relief, against Logitech, Inc. ("Logitech") as follows:

19 **INTRODUCTION**

20 GlobalMedia and Logitech are parties to a Settlement and License Agreement
21 dated December 31, 2001 (the "Agreement"). See Exhibit 2.¹ The Agreement concerns
22 U.S. Patent No. 5,855,343, entitled "Camera Clip" (the "343 patent"). See Exhibit 3.

23 The Agreement requires Logitech to pay royalties for "Licensed Products." The
24 parties have a dispute over which of Logitech's products are Licensed Products, and
25 thus over the amount of royalties owed by Logitech to GlobalMedia under the
26

27
28 ¹ Due to the confidential nature of the Agreement, Exhibit 2 is a redacted version
thereof.

1 Agreement.

2 Efforts to resolve this dispute have reached an impasse, and thus GlobalMedia
3 has requested arbitration per the Agreement. The Agreement sets forth a process for
4 appointing an arbitrator. GlobalMedia has proposed a respected, qualified arbitrator,
5 Mr. Thomas Smegal. However, Logitech has not agreed for Mr. Smegal to serve as
6 arbitrator, nor has Logitech proposed any alternatives. Logitech merely denies that
7 arbitration is appropriate because Logitech disputes the merits of GlobalMedia's claim.
8

9 Logitech's disregard of the arbitrator appointment process serves to frustrate the
10 entire agreed arbitration process. The Agreement provides that if, as here, the parties
11 are unable to agree upon an arbitrator, then either party may apply for the court to
12 appoint one. Accordingly, GlobalMedia respectfully requests this Court to enter an
13 order appointing Mr. Smegal as arbitrator, and further directing that arbitration shall
14 proceed.

15 **PARTIES**

16 1. Plaintiff GlobalMedia is a limited liability company organized and
17 existing under the laws of the state of Arizona with its principal place of business at
18 15020 North 74th Street in Scottsdale, Arizona.

19 2. Upon information and belief, defendant Logitech is a corporation existing
20 and organized under the laws of California with its principal place of business at 6505
21 Kaiser Drive in Fremont, California.

22 **JURISDICTION AND VENUE**

23 3. This Court has diversity jurisdiction over this controversy pursuant to 23
24 U.S.C. § 1332, *et seq.* There is complete diversity of citizenship among the parties.
25 GlobalMedia is an Arizona limited liability company, and GlobalMedia's principal
26 place of business is in Scottsdale, Arizona. Logitech is a California corporation, and
27 its principal place of business is in Fremont, California. In addition, the amount in
28 controversy exceeds \$75,000 exclusive of interests and costs. Based upon available

1 information, GlobalMedia's claim for underpaid royalties against Logitech amounts to
2 millions of dollars.

3 4. Additionally, or in the alternative, GlobalMedia has a good faith belief to
4 assert that this court has federal question jurisdiction over this action because it arises
5 under the patent laws of the United States, including 35 U.S.C. § 271, *et seq.*
6 GlobalMedia contends in good faith that this case arises under the Patent Act because,
7 although a contract dispute on its face, it involves right to relief which depends on the
8 scope of the '343 patent, and thus it involves resolution of a substantial question of
9 federal patent law. *See, e.g., Warrior Sports, Inc. v. Dickinson Wright, PLLC*, ___ F.3d
10 ___, 2011 WL 95332 at *3 (Fed. Cir. 2011). Thus, although diversity jurisdiction is
11 clear and undisputable, GlobalMedia alternatively contends that this court has federal
12 question jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1338 and/or 1441.
13

14 5. Logitech is subject to this Court's specific jurisdiction because multiple
15 acts and omissions at issue (*e.g.*, the non-payment of royalties and the failure to abide
16 by the parties' agreement to arbitrate) occurred in and from California. In addition,
17 Logitech is subject to this Court's general jurisdiction, including because it is a
18 California corporation, its headquarters are in California, and it does continuous and
19 systematic business in California. In addition, paragraph 7.10 of Agreement has a
20 forum selection clause naming this judicial district.

21 6. Venue is proper in this district under 28 U.S.C. § 1391(b), (c), and/or (d),
22 including because Logitech resides, and is subject to personal jurisdiction, in this
23 district; and a substantial part of the events or omissions giving rise to this action
24 occurred in this district. In addition, paragraph 7.10 of Agreement has a forum
25 selection clause naming this judicial district.

FACTUAL SUMMARY

27 7. This complaint/application concerns the Agreement at Exhibit 2 hereto.
28 The Agreement is nominally between PAR Technologies, Inc. ("PAR") and Logitech.

1 However, GlobalMedia is the undisputed successor to PAR. In fact, Logitech has
2 previously paid certain royalties to GlobalMedia, as PAR's successor, under the
3 Agreement (although such royalty payments are deficient, which is the crux of the
4 dispute between the parties).

5 8. The Agreement provided for the settlement of two patent infringement
6 lawsuits, both of which concerned the '343 patent. One lawsuit was styled *PAR*
7 *Technologies v. Logitech*, No. 01-1273, in the U.S. District Court for Arizona. In the
8 Arizona lawsuit, PAR contended that Logitech infringed the '343 patent. The other
9 lawsuit was styled *Logitech v. PAR Technologies*, No.CV-01-1982, and it was filed in
10 this judicial district. In the California lawsuit, Logitech requested a declaration that it
11 did not infringe the '343 patent, and that the patent was invalid.

12 9. The '343 patent covers certain novel configurations of devices which are
13 commonly referred to as webcams. See Exhibit 3. The Agreement requires Logitech to
14 pay GlobalMedia certain royalties for "Licensed Products," which are defined in
15 paragraph 1.6 as "any device manufactured by or for Logitech and/or its Affiliate,
16 which may be covered by the '343 patent."

17 10. The parties have a dispute over royalties payable under the Agreement.
18 GlobalMedia has identified multiple webcams which it deems to be Licensed Products,
19 but for which Logitech has not paid royalties. In addition, in order to determine the
20 amount of royalty underpayment, GlobalMedia has requested an audit under paragraph
21 3.5 of the Agreement. Logitech disputes that the webcams at issue are royalty bearing
22 Licensed Products, and Logitech refuses to pay royalties on them. In addition,
23 Logitech has refused the requested audit.

24 11. Article 6 of the Agreement provides for a dispute resolution procedure
25 which includes binding arbitration. Efforts to resolve this dispute amicably have
26 reached an impasse, and thus on February 8, 2011, GlobalMedia provided written
27 notice to Logitech requesting arbitration pursuant to paragraph 6.1 of the Agreement.

1 12. Paragraph 6.2 of the Agreement provides for appointment of an arbitrator,
2 who must have substantial experience and expertise in patent law. The preferred
3 method for appointing an arbitrator is for the parties to agree upon one. In its February
4 8, 2011 letter, GlobalMedia proposed an arbitrator, Mr. Thomas Smegal. Mr. Smegal
5 is a seasoned and well respected litigator and arbitrator. Further, as evidenced by Mr.
6 Smegal's bio at Exhibit 4, he has substantial experience and expertise in patent law.

7 13. To date, Logitech has not disputed Mr. Smegal's qualifications to serve as
8 arbitrator. Rather, continuing a dilatory course of behavior, Logitech has neither
9 agreed for Mr. Smegal to serve as arbitrator, nor has Logitech proposed any
10 alternatives. Logitech denies that arbitration is appropriate for a long list of excuses,
11 which appear centered around its dispute of the merits of GlobalMedia's claim.
12 Among other things, Logitech denies that the webcams at issue qualify as Licensed
13 Products.

14 14. In sum, Logitech refuses to permit an audit of its webcam sales, it refuses
15 to agree upon an arbitrator, and it refuses arbitration, which is the sole forum for
16 holding Logitech accountable for underpayment. Logitech appears to think that it can
17 pay whatever royalties it sees fit, and then stick its head in the sand to avoid being held
18 accountable for its actions.

19 15. Paragraph 6.2 further provides that if, as here, the parties are unable to
20 agree upon an arbitrator, then either party may apply to the court to request
21 appointment of one. Regrettably the parties are unable to agree upon an arbitrator.
22 Accordingly, GlobalMedia respectfully requests this Court to enter an order appointing
23 Mr. Smegal as arbitrator, and further compelling Logitech to participate in the agreed
24 arbitration process.

25 16. Although Logitech's dispute of liability under the Agreement is meritless,
26 it is a matter that can, and should, be resolved by the arbitrator via the agreed
27 arbitration process.

CLAIMS FOR RELIEF

I. APPLICATION TO COMPEL ARBITRATION UNDER THE FAA

17. The foregoing factual summary is incorporated by reference.

18. Pursuant to the Federal Arbitration Act (the "FAA"), 9 U.S.C. § 1, *et seq.*, this Court should appoint Mr. Thomas Smegal as arbitrator,² and the Court should compel Logitech to arbitrate this dispute.

19. The FAA provides that a "written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction ... shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2. A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition a court for an order directing that such arbitration proceed in the manner provided for in such agreement.

20. If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed. *Id.* at § 5. However, if there is a lapse in the naming of an arbitrator, then upon the application of either party to the controversy, the court shall designate and appoint an arbitrator as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein. *Id.*

21. The FAA espouses a general policy favoring arbitration agreements. See *Moses H. Cone Mem'l Hosp. v. Mercury Constr.*, 460 U.S. 1, 24-25, 103 S.Ct. 927 (1983); see also *Hall Street Assoc. v. Mattel*, 552 U.S. 576, 581, 128 S.Ct. 1396 (2008). Thus, federal courts are required to rigorously enforce an agreement to

² Alternatively, should the Court not deem Mr. Smegal to be the appropriate arbitrator for this matter, this Court should appoint an arbitrator of its choosing pursuant to Section 6.2 of the Agreement and/or Section 6 of the FAA.

1 arbitrate. *See Hall Street Assoc.*, 552 U.S. at 582.

2 22. In determining whether to issue an order compelling arbitration, the court
3 may not review the merits of the dispute but must limit its inquiry to (1) whether the
4 contract containing the arbitration agreement evidences a transaction involving
5 interstate commerce, (2) whether there exists a valid agreement to arbitrate, and (3)
6 whether the dispute(s) fall within the scope of the agreement to arbitrate. *See Republic*
7 *of Nicaragua v. Standard Fruit Co.*, 937 F.2d 469, 477-478 (9th Cir.1991), *cert.*
8 *denied*, 503 U.S. 919 (1992). If the answer to each of these queries is affirmative, then
9 the court "must" order the parties to arbitration in accordance with the terms of their
10 agreement. 9 U.S.C. § 4.

11 23. This Court should appoint an arbitrator in accordance with Paragraph 6.2
12 of the Agreement, and it should compel Logitech to arbitrate this royalty dispute with
13 GlobalMedia. The Agreement evidences a transaction involving interstate commerce,
14 which includes the settlement of two federal patent infringement lawsuits which were
15 pending in Arizona and California, and also Logitech's nationwide sales of what are
16 believed to be millions of royalty bearing webcams. Further, it is indisputable that
17 Article 6 of the Agreement constitutes a valid agreement to arbitrate.

18 24. Finally, this royalty dispute clearly falls within the scope of the agreement
19 to arbitrate. This dispute concerns whether certain Logitech webcams fall within the
20 definition of "Licensed Products," and Paragraph 6.1 of the Agreement provides that
21 the parties shall arbitrate "any disputes that may arise under this Agreement, including
22 but not limited to disputes whether a product falls within the definition of a Licensed
23 Product."

24 25. Accordingly, pursuant to the FAA, this Court "must" order the parties to
25 arbitration in accordance with the terms of their Agreement. *See* 9 U.S.C. § 4.

II. (ALTERNATIVELY) APPLICATION TO COMPEL ARBITRATION UNDER THE CAA

1. The foregoing factual summary is incorporated by reference.

2. Although the FAA clearly applies to, and should govern disposition of this matter, to the extent the Court might deem the FAA as inapplicable, the California Arbitration Act (the "CAA"), Code Civ. Proc. § 1281, *et seq.*, provides an alternative basis for this Court to appoint Mr. Smegal as arbitrator,³ and to compel Logitech to arbitrate this dispute.

3. A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable. *Id.* at § 1281. On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court "shall" order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists. *Id.* at § 1281.2.

4. If the arbitration agreement provides a method of appointing an arbitrator, that method shall be followed. *Id.* at § 1281.6. In the absence of an agreed method, or if the agreed method fails or for any reason cannot be followed, the court, on petition of a party to the arbitration agreement, shall appoint the arbitrator. *Id.*

5. The CAA represents a comprehensive statutory scheme regulating private arbitration in this state. *Haworth v. Superior Court*, 50 Cal.4th 372, 380, 235 P.3d 152 (2010). The statutory scheme reflects a ‘strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution. *Id.*

⁶. As noted above, it is indisputable that Article 6 of the Agreement

³ Alternatively, should the Court not deem Mr. Smegal to be the appropriate arbitrator for this matter, this Court should appoint an arbitrator of its choosing pursuant to Section 6.2 of the Agreement.